

APPEAL NO. 020461
FILED APRIL 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2002. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second compensable quarters, but that he was entitled to SIBs for the third compensable quarter. The claimant appealed the hearing officer's determinations on the first and second quarters on sufficiency grounds and sought affirmance of his determination of the claimant's eligibility for the third SIBs quarter. The respondent/cross-appellant (carrier) also appealed, arguing that the hearing officer erred in admitting Claimant's Exhibit No. 1 (Texas Rehabilitation Commission [TRC] correspondence) into evidence, as it was not timely exchanged. In addition, the carrier challenged the hearing officer's determination of the claimant's SIBs eligibility for the third quarter on sufficiency grounds, and sought affirmance on the determinations that the claimant was not eligible for SIBs for the first and second quarters. Neither party responded to the other's appeal.

DECISION

Affirmed.

We first address the carrier's challenge of the hearing officer's admission into evidence of Claimant's Exhibit No. 1, the TRC correspondence. The carrier timely objected to the exhibit's admission, and the hearing officer abstained from ruling until after the claimant's testimony. At the end of the claimant's testimony, the hearing officer admitted the documents into evidence, even though they had not been timely exchanged, apparently on the basis of the good cause or other legal excuse. The carrier complains on appeal that the hearing officer relied upon these documents in reaching his conclusions; however, the claimant's "cooperation" with the TRC (as purportedly shown in Claimant's Exhibit No. 1) does not appear to have been the basis for the hearing officer's determination that the claimant was entitled to third quarter SIBs. The hearing officer determined that the claimant made a good faith job search during the qualifying period, and made only a tangential finding regarding the claimant's "cooperation" with the TRC. Thus, if the hearing officer erred in admitting the TRC documents, his error was harmless because the admission of the documents did not result in the rendition of an improper decision.

With regard to the resolution of the certified issues, the hearing officer did not err in determining that the claimant was not eligible for first and second quarter SIBs, but was eligible for third quarter SIBs. The hearing officer decided that the claimant failed to establish that he looked for work every week of the qualifying period for the first and second quarters, but that he did establish his eligibility for third quarter SIBs. The parties presented conflicting evidence regarding these issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that

the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLENN CAMERON
222 W. LAS COLINAS BOULEVARD, SUITE 1720
IRVING, TEXAS 75016-7968.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge